IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17400 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VEERSING ALIAS VEERLABHAI VEACHANDBHAI RATHVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17400 of 2003

MR MA KALATHIL for Petitioner No. 1

MR LR PUJARI Ld. AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Mr.L.R.Pujari, learned AGP has placed on record the affidavit in reply on behalf of respondent no.2.

Same is kept on record.

2. Heard Mr.Methew Kalathil, learned advocate for the petitioner and Mr.L.R.Pujari, learned AGP for the respondents.

3. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 14.8.2003 (Annexure-A) passed by respondent no.2 under the provisions of Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and prays for quashing and setting of the impugned order of detention.

4. The grounds of detention (Page-17 of the paper book) suggest that in the year 2002 and 2003, two prohibition cases under the provisions of Bombay Prohibition Act came to be registered in Chhotaudepur Police Station against the petitioner - detenu. The first case was registered under Sections 66(B), 65(A)(E) and 116(2) of the Prohibition Act on 16.9.2002 and the second under the same provisions on 13.5.2003. In the grounds of detention, unregistered cases have also been referred to and the statements of 3 witnesses recorded, whose identity has been withheld invoking privilege under Section 9(2) of the PASA Act. Thus, the petitioner is alleged to be a 'bootlegger' dealing in store and sale of liquor which is injurious to the public health adversely affecting the maintenance of public order, according to the grounds of detention.

5. Challenging the impugned detention order, it has been submitted by the learned advocate for the petitioner that for the purpose of recording the subjective satisfaction required under Section 9(2) of the PASA Act, there is no contemporaneous material to suggest the apprehension expressed by the witnesses is genuine nor the statements given by them is genuine. It is further contended that there is no verification of the veracity of the incident stated by the witnesses in their statements recorded by the police authorities and verified by the detaining authority.

6. Page-88 of the paper book is the copy of the statement recorded on 8.5.2003 of a witness. The detaining authority, as per Pages-90 and 91, verified the statement of the witness. Perusal of the same suggests that the witness reiterated what he earlier stated before the Deputy Superintendent of Police and also stating that there is apprehension to his person and property as

Veersing @ Veerbhai is a dangerous person, also requesting the identity to be withheld. It is also stated that the statement given by him is correct and the same has been read over to him to which he has appended his thumb mark impression. The verification at Page-95 of the statement of the other witness is also on the same line as previous witness suggesting that the witness reiterated same thing before the detaining authority as stated earlier before the Deputy Superintendent of Police. It is not suggested that except the verification as above by the detaining authority, there is any other contemporaneous material so as to record the subjective satisfaction about the genuineness of the statements given by the witnesses as also the verification about the veracity of the incident. All what the verification by the detaining authority suggests is the reiteration by the witnesses of what they stated before the Deputy Superintendent of Police.

7. In the case of Ganshyam alias Kaliyo, S/O Hiralal Tank Vs. State of Gujarat in Special Civil Application No.12733 of 2003, the learned Single Judge (Coram : A.L.Dave,J.) in Para.5 has observed, "..... that the detaining authority has observed that the fear expressed by the witness and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike the balance between the two. ....."

8. In the instant case, there is no material to suggest that any exercise was undertaken to verify the veracity of the incident as well as the genuineness of the statements given by the witnesses, as also the fear expressed by them for the purpose of exercising the privilege under Section 9(2) of the PASA Act and therefore, the exercise of powers under Section 9(2) of the PASA Act can be said to have been vitiated. Under the circumstances, no reliance can be placed on the statement of the witnesses for sustaining the impugned order of detention as there is no proper exercise of powers under Section 9(2) of the PASA Act (Kajalben G.

Sindhi V. Commissioner of Police, 2000(1) GLH 320).

9. In the above view of the matter, the impugned detention order is liable to be quashed and set aside.

10. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 14.8.2003 passed by respondent no.2 against the petitioner-detenu -Veersing alias Veerabhai Veachanbhai Rathva is hereby quashed and set aside. The petitioner - detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)